

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

v

JASON CAVES,

Defendant-Appellant.

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UNPUBLISHED  
September 19, 2017

No. 333079  
Ingham Circuit Court  
LC No. 15-000088-FH

Before: HOEKSTRA, P.J., and METER and K. F. KELLY, JJ.

PER CURIAM.

A jury convicted defendant of three counts of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(a) (victim under 13 years old). The trial court sentenced defendant to 50 to 180 months' imprisonment. Defendant appeals as of right. Because defendant was not denied the effective assistance of counsel during the plea bargaining process, we affirm.

Following trial, defendant filed a motion for specific performance of a plea offer, arguing that he rejected two plea offers made by the prosecution because his trial counsel erroneously advised him that he might be eligible for Special Alternative Incarceration (SAI) (commonly, "boot camp") and incorrectly stated that he faced a maximum of 57 months' imprisonment, when in actuality he faced a statutory maximum of 15 years under MCL 750.520c(2)(a). But for this misinformation, defendant contended that he would have accepted one of the prosecutor's plea offers, which were more favorable than the sentence he received following trial. Based on these assertions, defendant argued that he was denied the ineffective assistance of counsel and that he was entitled to have the prosecutor reoffer the plea agreement under *Lafler v Cooper*, 566 US 156, 174; 132 S Ct 1376, 1391; 182 L Ed 2d 398 (2012).

After a *Ginther*<sup>1</sup> hearing at which defendant and his attorney testified, the trial court denied defendant's motion in a comprehensive opinion, providing detailed findings of fact and well-reasoned conclusions of law to support the determination that defendant had not shown that he was denied the effective assistance of counsel during the plea bargaining process. Briefly stated, with regard to the maximum possible sentence, the trial court concluded that defendant

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<sup>1</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

had been informed of the 15-year statutory maximum, that counsel's reference to a 57 month maximum was a reference to the high end of defendant's advisory minimum guideline range of 29 to 57 months, and that defense counsel had discussions with defendant in which he explained the significance of the guidelines to defendant. In terms of the possibility of boot camp, the trial court determined that, before trial, counsel mentioned boot camp on one occasion in a hypothetical manner and that the discussion could not logically have led defendant to believe that he would receive boot camp. The trial court also determined that defendant's claim that he proceeded to trial based on the assumption that he would get 90-days in boot camp was belied by his willingness to plead guilty in exchange for 365 days in jail, an offer which defense counsel relayed to the prosecutor, but which the prosecutor rejected. In these circumstances, the trial court determined that defendant "failed to satisfy the required elements of the ineffective assistance test."

On appeal, defendant again argues that he received ineffective assistance during the plea bargaining process. He presents the same argument that he made in the trial court—namely, that he rejected the prosecutor's plea offer and proceeded to trial based on the incorrect information provided to him by counsel in terms of his eligibility for boot camp and his maximum possible sentence. As discussed, the trial court rejected these assertions. Having reviewed the record, we conclude that the trial court's factual findings were not clearly erroneous, and we agree with the trial court's well-reasoned legal analysis. See *People v Shaw*, 315 Mich App 668, 671-672; 892 NW2d 15 (2016) ("[T]his Court reviews for clear error the trial court's findings of fact and reviews de novo questions of law."). On the facts of this case, defendant has not demonstrated that counsel's advice and representations fell below an objective standard of reasonableness, and he has not shown a reasonable probability that, but for counsel's advice, the result of the plea proceedings would have been different. See *Lafler*, 566 US at 163-164; *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014). Thus, he has not demonstrated ineffective assistance of counsel, and defendant is not entitled to have the prosecutor reoffer the plea agreement. See *Lafler*, 566 US at 174.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Patrick M. Meter  
/s/ Kirsten Frank Kelly